

Message Text

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FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 9865

C O N F I D E N T I A L SANTIAGO 4926

E.O. 11652: GDS

TAGS: CI, PINS, PINT

SUBJECT: POSSIBLE RESTRICTION OF USE OF HABEAS CORPUS

1. SUMMARY. ACTING AT REQUEST OF INTERIOR MINISTER, SUPREME COURT HAS INSTRUCTED COURT OF APPEALS TO EXAMINE CAREFULLY PROPRIETY OF ALL REQUESTS FOR HABEAS CORPUS (AMPARO) IN INTERNAL SECURITY AREAS. LETTER FROM THEN MIN. OF INTERIOR (NOW DEFENSE MINISTER) OSCAR BONILLA TO MIN. OF JUSTICE EXPLAINED NEGATIVE EFFECT ON CHILE'S IMAGE CREATED BY PUBLICIZED REJECTION BY COURTS OF SUCH REQUESTS. SUBSEQUENT SUPREME COURT ACTION SUGGESTS GOC MAY HAVE SOME SUCCESS IN RESTRICTING THESE JUDICIAL PROCEEDINGS. END SUMMARY.

2. IN JUNE 17 LETTER TO MIN. OF JUSTICE, AS REPORTED IN SANTIAGO PRESS, BONILLA EXPRESSED CONCERN OVER GROWING NUMBER OF REQUESTS FOR HABEAS CORPUS IN INTERNAL SECURITY CASES RECEIVED BY COURT OF APPEALS IN SANTIAGO. STATED THAT ALTHOUGH ALL REQUESTS HAD BEEN REJECTED BY COURTS, HE "CANNOT FAIL TO RECOGNIZE" THAT PUBLICITY SURROUNDING THESE CASES CREATES DISTORTION OF REALITY IN NATIONAL AND INTERNATIONAL OPINION. BONILLA INDICATED PROCEDURE CREASTES IMPRESSION THAT GOC CONCEALS DETAINEES AND DOES NOT RESPECT JUDICIAL AUTHORITY.

4. BONILLA MAINTAINED IT WAS POSSIBLE THAT ELEMENTS OPPOSING JUNTA WERE MAKING ILLEGITIMATE USE OF LAW TO PAD STATISTICS
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BY SIMULATING DISAPPEARANCE OF PERSONS AND EVEN BY USING

FICTITIOUS NAMES. HE ASKED IF MINISTER OF JUSTICE COULD CONSIDER MODIFYING REGULATIONS TO GUARANTEE THAT REQUESTS FOR ISSUANCE OF WRITS WERE WELL FOUNDED, WITHOUT RESTRICTING BASIC PURPOSE.

5. BONILLA'S LETTER WAS ATTACHED TO AUG 6 SUPREME COURT INSTRUCTION TO COURTS OF APPEALS TO EXAMINE "GENUINE CHARACTER AND PRECISE PURPOSE" OF EACH REQUEST IN ACCORDANCE WITH CODE FOR CRIMINAL PROCEEDINGS.

6. DURING AUG 9 CALL BY AMB ON MIN. OF JUSTICE, GEN. HUGO MUSANTE ROMERO, MIN. STATED THAT CIVILIAN COURTS HAVE NO JURISDICTION OVER PERSONS DETAINED UNDER STATE OF SIEGE OR TRIED IN MILITARY TRIBUNALS. MIN. ARGUED THAT MANY "AMPARO" REQUESTS HAD BEEN FRAUDULENT. SAID GOC WANTED TO ELIMINATE THESE "FRAUDULENT" REQUESTS, WHICH HE CLAIMED WERE ATTEMPTS BY MARXISTS TO BLACKEN CHILE'S IMAGE.

7. COMMENT: CIVIL COURTS HAVE IN FACT TURNED DOWN, ON BASIS THEY LACK JURISDICTION, ALL REQUESTS FOR "AMPARO" FOR PERSONS DETAINED UNDER STATE OF SIEGE REGULATIONS AND TRIED UNDER MILITARY JUSTICE SYSTEM. CLEARLY THIS CREATES AN IMAGE PROBLEM FOR THE CHILEANS, AND THEY APPEAR TO BE GROPING FOR SOME WAY TO MINIMIZE IT.

8. IT IS POSSIBLE THAT ONE FACTOR IN PRESENTING SUCH REQUESTS TO THE COURTS IS A DESIRE TO EMBARRASS THE JUNTA, THOUGH WE WOULD IMAGINE THAT THAT FAMILY OF ANY DETAINEE HELD IN SOME UNKNOWN DETENTION CENTER WITHOUT CHARGES MIGHT IN PERFECTLY GOOD FAITH WISH TO SEEK THE PROTECTION IT BELIEVES THE LAW SHOULD ALLOW. WE DO NOT KNOW WHETHER THERE HAVE BEEN TRUMPED-UP CASES FOR ADVERSE PROPAGANDA PURPOSES; IF THERE ARE, IT WOULD SEEM THAT THE APPROPRIATE REMEDY WOULD BE TO PROCEED AGAINST PERJURERS PRESENTING SUCH CASES TO THE COURTS.
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